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11
12 UNITED STATES DISTRICT COURT
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA
14

15 AMERICAN CIVIL LIBERTIES
16 UNION FOUNDATION OF
SOUTHERN CALIFORNIA,

17 Plaintiff,

18 v.

19 UNITED STATES IMMIGRATION
20 AND CUSTOMS ENFORCEMENT, et
al.,

21 Defendants.
22

No. 2:22-cv-04760-SHK

DEFENDANTS' STATUS REPORT

Conference Date: March 4, 2024
Conference Time: 9:30 a.m.

Honorable Shashi H. Kewalramani
United States Magistrate Judge
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Pursuant to the Court’s December 8, 2023 Order (Dkt. 62) Defendants U.S. Immigration and Customs Enforcement (“ICE”), U.S. Department of Homeland Security (“DHS”), and DHS Office of Inspector General (“OIG”) submit the following status report.¹

I. DEFENDANTS DHS AND OIG

Pursuant to the Court’s December 21, 2023 Order, Defendant OIG provided a search summary and *Vaughn* Index to Plaintiff. (Dkt. 64.) Defendants DHS and OIG contend that they have satisfied their obligations under FOIA with respect to Plaintiff’s nine-part Request. Plaintiff disagrees. As a result, counsel for the parties met and conferred regarding a briefing schedule to address Plaintiff’s challenges, which the Court ordered on December 21, 2023. *See* Dkts. 63, 64. On February 23, 2024, Plaintiff filed its motion. *See* Dkt. 66.²

Pending before this Court, as of the date of this status report, is the parties’ stipulation requesting the following amended briefing schedule (*see* Dkt. 68):

March 27, 2024 – Deadline for Defendants DHS and OIG to file their Cross-Motion for Summary Judgment and Opposition Brief;

April 17, 2024 – Deadline for Plaintiff to file its Opposition and Reply Brief;

May 1, 2024 – Deadline for Defendants to file their Reply Brief.

The new proposed hearing date for the Cross-Motions is May 15, 2024.

II. ICE

A. CONSULTATION REGARDING NARROWING OF SCOPE OF REQUESTS

On December 13, 2023, Plaintiff’s counsel sent Defendants’ counsel an eight-page

¹ For brevity’s sake, Defendants assume both Plaintiff’s and the Court’s familiarity with the background and procedural history of this Freedom of Information Act (FOIA) case. The Court’s December 8, 2023 order includes a summary as well. *See* Dkt. 62 at 3-5.

² Plaintiff subsequently filed an amended Motion for Summary Judgment on February 28, 2024 that complied with the word limitations of the Local Rules. *See* Dkt. 67.

1 letter raising a number of issues, including those regarding the search for records
2 responsive to Plaintiff's Request. On December 14, 2023, counsel for the parties
3 participated in a pre-planned teleconference that was scheduled to comply with the
4 Court's December 8th Order. *See* Dkt. 62 at 15. On January 17, 2024, Defendants'
5 counsel sent a letter to Plaintiff's counsel responding to their December 13, 2023 letter
6 as well as matters raised during the December 14, 2023 telephone conference.

7 On January 22, 2024, Defendants' counsel sent a letter to Plaintiff's counsel
8 providing all information required by the Court's December 8th Order. *See* Dkt. 62 at 15
9 ("By January 22, 2024, ICE shall provide the following..."). In that letter, ICE advised
10 that, with respect to Parts 1-3 of the Request, there were approximately 38,285 pages
11 remaining to process, broken down as follows by individual:

- 12 • Jose Ibarra Bucio: 1,157 pages
- 13 • Martin Vargas Arellano: 5,263 pages
- 14 • Teka Gulema: 31,865 pages. (All pages from October 1, 2015 and after
15 have been processed. The remaining 31,865 pages to be processed are from
16 before October 1, 2015.)
- 17 • Johana Medina Leon: All pages have been processed.

18 ICE further advised that if the Gulema records preceding October 1, 2015 were
19 excluded, the remaining number of pages to process was 6,420.

20 With respect to Parts 4-9, ICE advised that the number of potentially responsive
21 records were as follows:³

22 Part 4: 142,000 documents along with 27 pages from ICE Health Service Corps
23 (IHSC).

24 Part 5: 551 pages

25 Part 6: 397 pages

26 Part 7: 18 pages

28 ³ ICE also provided information regarding the searched locations and custodians.

1 Part 8: 1,711 pages

2 Part 9: 1 Excel spreadsheet.

3 On January 26, 2024, Plaintiff responded to Defendants' January 17, 2024 and
4 January 22, 2024 letters with additional inquiries. On February 5, 2024, and pursuant to
5 the December 8th Order, Plaintiff stated that it "waives production of the remaining
6 31,865 pre-October 1, 2015 pages, with some exceptions." Plt. Feb. 5, 2024 Ltr. at 1.
7 Those exceptions were as follows:

- 8 • Plaintiff did not waive production of any records referred by OIG to ICE.
- 9 • Plaintiff did not waive any records that resulted from a search conducted of certain
10 custodians.
- 11 • Plaintiff did not waive production of any records that include or were the result of
12 a search of the custodian named on Page 10542 of ICE's production.

13 *Id.*

14 On February 21, 2024, ICE replied that it had reviewed the proposal to waive
15 certain documents, but the records were not separated by custodian. Def. Feb. 21, 2024
16 Ltr. at 3. ICE advised that it would attempt to determine whether it could otherwise limit
17 the remaining pages to be reviewed in line with Plaintiff's proposal. To that end, ICE
18 searched through the entire set of documents by the custodians identified by Plaintiff, but
19 that search still resulted in approximately 31,000 pages.

20 For Part 4, Plaintiff agreed to waive production of the 142,000 documents found
21 after ICE used previously agreed-to search terms and connectors while searching the
22 emails of three custodians. *Id.* at 2.

23 For Part 5, Plaintiff agreed to waive searches of Medical Transfer Summary
24 Documents from DHS's eHR System and Alien Medical Records System. Plaintiff also
25 stated that it would narrow its search request to "all staff who participate in the weekly
26 Detainee Illness (SDI) meeting and any custodian who possesses the SDI list." *Id.*
27 However, as ICE explained in its February 21, 2024 letter, Plaintiff's proposal that ICE
28 conduct a search of staff who "participate" in the weekly SDI meeting and any custodian

1 who possesses the SDI list is unduly burdensome because it would encompass hundreds
 2 of custodians who attended the SDI meetings from 2016 to the present. Nonetheless, ICE
 3 did state that it would consider again Plaintiff's request for further searches *after* it
 4 processed the 551 pages of potentially responsive documents found following the
 5 Assistant Director of IHSC's search.

6 Plaintiff did not agree to waive or narrow the scope of searches for Parts 6-9.

7 **B. COURT-ORDERED RESPONSE REGARDING STATUS OF ICE'S**
 8 **SEARCHES AND PROCESSING OF DOCUMENTS**

9 The Court's December 8th Order directed ICE to provide the following
 10 information in this status report: (1) an estimated time for concluding the search for
 11 responsive documents; (2) an estimated number of pages to be produced in response to
 12 the Request; and (3) an estimated time for completion of production at a processing rate
 13 of 3,000 pages per month. *See* Dkt. 62 at 15-16. It thus provides the following:

14 (1) Subject to consideration of additional searches *after* ICE concludes the
 15 processing of records currently in queue, ICE has now concluded its search for records
 16 responsive to Plaintiff's Request.

17 (2) At this time, ICE estimates that there remain 39,972 pages to *process* plus one
 18 Excel spreadsheet. ICE is unable to provide an estimate of the number of pages that will
 19 ultimately be *produced* because it has yet to determine whether each processed page is
 20 responsive, duplicative, or subject to withholding until that page is reviewed by a FOIA
 21 processor. The breakdown of remaining pages by part to be processed is as follows:

22 Parts 1-3: 37,252 pages

- 23 • Jose Ibarra Bucio: 124 pages
- 24 • Martin Vargas Arellano: 5,263 pages
- 25 • Teka Gulema: 31,865 pages.

26 (If the Gulema records preceding October 1, 2015 are excluded, the
 27 remaining number of pages to process would be 5,387.)

28 Part 4: 43 pages

Part 5: 551 pages

Part 6: 397 pages

Part 7: 18 pages

Part 8: 1,711 pages

Part 9: 1 Excel spreadsheet.

Additionally, there are 328 pages of documents referred by OIG to be processed.

(3) At a processing rate of 3,000 pages per month, ICE currently estimates that it will finish its production by May 2025.

Dated: March 1, 2024

Respectfully submitted,

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